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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,409	03/26/2004	Brett Ashley Roderick	JH03-182	8915
7590	12/11/2006		EXAMINER OKEZIE, ESTHER O	
John C. Andrade, Esquire 116 West Water Street P. O. Box 598 Dover, DE 19903			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,409	Applicant(s) RODERICK, BRETT ASHLEY	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/25/06 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,6,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambson. It is noted that the applicant has set forth the subcombination of a tool for securing a bracket and but refers to the combination of a tool and a bracket. These claims are being treated as the subcombination.
2. Re claim 1, Lambson discloses a tool for placing brackets to secure a joist to a header comprising:

(a) a tool body (6);

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(b) legs (1) rigidly connected to said body and extending upward from said body (fig 2);

(c) means for holding a bracket (7) having a heel and two upright members when inserted between said legs comprising a pedestal keel (14) extending outward from said body; and

(d) a handle (32) extending downward from said body; and

(e) pedestal tongues (8,9) extending outward in the opposite direction of the pedestal keel away from said body.

3. Re claim 6, said pedestal keel and said pedestal tongues have a top and said top of said pedestal keel is offset and lower than said top of said pedestal tongue by the thickness of said heel of said bracket, depending on the size of the bracket.

4. Re claim 10, the handle (32) is ribbed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lambson. Lambson does not disclose the tool constructed from plastic. Plastic tools are old and well known in the subject matter area of the invention. It would have been obvious to make the out of plastic since tools made of plastic are of lighter weight.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lambson in view of Duffy. Lambson does not disclose a utility aperture located within the handle. Duffy discloses a tool for box setting with a utility aperture in the handle (22). It would have been obvious to one of ordinary skill in the art to modify the handle of Lambson to include a utility aperture as taught by Duffy in order to hang the tool from a hook when not in use.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lambson in view of Brodeur. Lambson does not disclose the handle set at an angle from the body. Brodeur discloses a joist hanger mounting tool with handle (30) set at angle from the tool body. It would have been obvious to one of ordinary skill in the art to modify the handle of Lambson to be set as taught by Brodeur at angle to the tool body in order "to promote safety of a user during joist hanger installation procedures by keeping the user's hands away from the joist hanger as the hanger is nailed to the header" (Brodeur: col. 1, lines 54-57; abstract).

Response to Arguments

Applicant's arguments with respect to claims 1 and 6-10 have been considered but are not persuasive.

Applicant has argued the legs (sections 1 and 3) of the device of Lambson are not rigidly connected to the body because the legs are adjustable. In response, although

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the legs are adjustable on the body, subsequent to adjustment, the legs are held rigidly to the body by posts (15) and seat members (17). See figure 3. Furthermore, Applicant has not claimed the connection is integral or one piece. Lambson shows a rigid connection prior to adjustment.

Applicant has argued the legs do not extend upward. In response, beginning at section (1) the lower part of the legs (3), the legs indeed extend upward from the body section (6). See figure 2. Furthermore, as seen in Figures 1 and 2 sections (1 and 2) extend upward from the body portion (6) because these sections lie above body portion (6).

Applicant has argued that the surfaces (8 and 9) are not pedestals because they act as stop surfaces and not supports. In response, though the surfaces (8 and 9) are utilized as stop surfaces shown in figure 2, these devices are capable of supporting an article, such as nails or screws, depending on the use of the device. Furthermore, pedestal according to Merriam Websters Dictionary Online refers to the base of an upright structure. Sections 8 and 9 clearly form part of the base of the upright device as seen in Figure 2.

Applicant has argued that Lambson does not show the spacing of the pedestal tongues and keel according to the thickness of the bracket. In response, the spacing would depend on the thickness of the bracket. Since Applicant argues, "In the current invention the offset of the thickness of the bracket is important to the function of the present invention..." Applicant has not as yet set forth that thickness; consequently an unknown dimension is being relied upon to modify the spacing of these elements.

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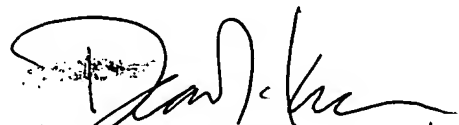
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EOO 12/06/06


DEAN J. KRAMER
PRIMARY EXAMINER 12/7/06